

NEBRASKA REAL ESTATE COMMISSION

April 18, 2013

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on April 18, 2013, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Freeman, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting were available to the public on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Director Lemon noted that no agenda items had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Ptak and seconded by Rouch to adopt the final agenda as presented. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Minutes of March 21, 2013

The minutes of the Commission meeting held on March 21, 2013, were considered.

After review, a motion was made by Ptak and seconded by Dover to approve the minutes as presented. Motion carried with Avery, Dover, Ptak, Rouch, and Stange voting aye, with Freeman not participating or voting, being absent and excused and with Gale not voting having not been in attendance at the March Meeting.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for March

Director Lemon presented the Receipts and Expenditures Report for March. A copy of said report is attached to and made a part of these minutes. Director Lemon noted that an explanation page was included on the report.

The cash fund balance as of March 31, 2013, was \$956,185.46, which compared to a cash fund balance of \$1,021,114.40 on March 31, 2012.

Director Lemon indicated that the Appropriation Committee's preliminary recommendation was to approve the request for additional money for legal fees each year, as well as the money requested for the Nebraska Specific pre-license education course.

After discussion, a motion was made by Dover and seconded by Ptak to file the March Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Hoffman presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Stange and seconded by Dover to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Examination Report - March

Deputy Director Hoffman presented for ratification the March Examination Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Dover and seconded by Rouch to ratify the March Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Examination Passing Roster

Deputy Director Hoffman presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Instructor Approval

Deputy Director Hoffman presented for ratification the Pre-License Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Instructor Approval

Deputy Director Hoffman presented for ratification the Continuing Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

Broker-Approved Training Recognition

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Dover and seconded by Ptak to ratify the four reports. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Instructor Development Workshop

Deputy Director Hoffman presented an exhibit regarding the proposed Instructor Development Workshop, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman noted that the Real Estate Educator Association (REEA) is holding an Instructor Development Workshop (IDW) in conjunction with its annual conference to be held in Ames, Iowa on June 21. She proposed that the Commission consider expending the funds that were originally budgeted for the Nebraska IDW, to provide registration and transportation for Nebraska trainers and educators to attend the REEA IDW instead. The added benefit would be the exposure to this international professional real estate education association and a strong program provided by six respected instructors.

Deputy Director Hoffman also requested that in order to encourage participation, she would like the Commission to consider extending six hours of continuing education credit to those who attend the workshop in full.

A motion was made by Dover and seconded by Stange to approve the expenditure of funds to attend the REEA Instructor Development workshop to include contracting with a transportation company. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

A motion was made by Dover and seconded by Avery to approve the six hours of continuing education credit be extended for those who attend the workshop in full. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

Discussion of Correspondence Study – 10:30 a.m.

Deputy Director Hoffman presented the current rules regarding correspondence study. A copy of said rules is attached to and made a part of these minutes. Susan Geschwender, Thomas F. Ackley and Paul Vojchegoske were present to discuss this agenda item.

Deputy Director Hoffman indicated that this item had been placed on the agenda at Mr. Vojchegoske's request. By way of context, she referred to exhibit 9f which contained the two sections of Title 299 being discussed. She explained that the current rules had been amended in July 2012 to allow those education activities, in a correspondence study format, that were Commission approved and ARELLO certified as of January 1, 2012, to continue to be approved by the Commission even though ARELLO would no longer certify that method of distance delivery. If the amendment to the Rules had not been made, all correspondence study would have been eliminated. Deputy Director Hoffman reminded the Commission that there had been no negative testimony at the rule hearing and that Fred Hoppe, representing the Nebraska REALTORS Association, had indicated their support.

Paul Vojchegoske indicated that he did not want to eliminate correspondence study, rather he would like to be given the opportunity to offer correspondence study and would like the Commission to consider opening the approval process up to new courses in addition to those that had been ARELLO certified and were grandfathered in under the current Rules.

Susan Geschwender with Randall School of Real Estate indicated that she did not feel that Randall School or others who had had correspondence study certified by ARELLO had been given any special advantage. Any provider could have submitted courses for approval and gone through the ARELLO Certification process, and that the opportunity was not unique to one school. Additionally, she must continue to administer the correspondence courses in compliance with the ARELLO standards.

Attorney Thomas F. Ackley, with Koley Jessen, PC was present and representing Randall School of Real Estate. Mr. Ackley distributed an additional exhibit which consisted of a letter of explanation from Mr. Ackley and Ms. Geschwender. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 9f1.

There was discussion regarding the Rule Hearing which created a "grandfather clause" for correspondence courses which had ARELLO approval at that time. Deputy Director Hoffman reminded the Commission that the most troubling aspects of ceasing to recognize correspondence study at the time of the Hearing was that a number of pre-license courses and the continuing education course required of all license recognition applicants would no longer be available in a distance education format. She indicated that while she felt the original rule change was appropriate, she would not recommend any action by the Commission that would go against requiring ARELLO certification of distance education programs. She indicated that the certification standards insured that the Commission was approving courses and providers with educational merit and integrity and that students were protected from those who had neither. By requiring certification, as the rule does, all distance education providers have to meet the same standards and are playing on a level playing field.

There was discussion regarding the possibility of utilizing another certification system since ARELLO no longer certified correspondence study. There was also discussion regarding the conversion of correspondence study to online courses and some of the obstacles with such conversion.

Ms. Geschwender indicated that she is currently working with a consultant to be able to get her correspondence study converted to ARELLO certified online courses. She explained the financial burden and some of the certification requirements which are making the process difficult but declared that the conversion would take place. Deputy Director Hoffman agreed that while converting these courses to electronic delivery was continuing to be challenging, it was happening and that four pre-license courses had since come online and another one was almost ready. She reported that currently, the Commission approves 13 pre-license distance education courses, 7 of these are in correspondence study format, however, that number will very soon drop to 5 because two have just been replaced with online versions. In continuing education there are currently approved 10 distance education providers offering 98 online activities, 9 webinar programs and 12 correspondence study activities.

Options for partnering or subcontracting a Learning Management System (LMS) platform for online class development were discussed. Commissioner Ptak shared his experience as an online instructor with the Commission pointing out the various learning tools online programs could utilize. He felt that finding and utilizing an LMS was within reach of all education providers.

Mr. Vojchehoske indicated that the Rules have created a protected class and he is unable to provide correspondence study at this time. Deputy Director Hoffman indicated that, with the exception of Mr. Vojchehoske, she is not aware of providers seeking to develop correspondence study courses. She noted that all providers can still develop and offer new distance education courses in the form of internet courses and feels that, given time, there will no longer be any grandfathered in correspondence study.

Commissioner Dover felt there was a huge benefit to correspondence study, one such benefit being that someone has to actually administer the examination. Deputy Director Hoffman indicated that if the concern of the Commission was that the examination for online courses was not proctored, such requirement could be required in the law. Commissioner Ptak again noted some of the features of online education.

Chairperson Gale felt that the future trend in course development was leaning towards the internet, whether we like it or not. He indicated that if the Commission would want to provide certification for correspondence studies to be submitted, there would be a financial impact. He felt that if there was a booming demand for correspondence study it might be appropriate to re-evaluate the rule, however, the fact is that correspondence study courses offerings are shrinking and disappearing. Commissioner Dover indicated that the Commission should not have to pay for the certification but rather the providers could.

Commissioner Ptak suggested speaking with ARELLO to see if they would be willing to reconsider offering the certification to correspondence study providers. He felt that the providers could then decide, themselves, if they wanted to certify correspondence study. Deputy Director Hoffman indicated she would have that discussion with ARELLO.

Chairperson Gale felt that a survey should be conducted of licensees to determine support for correspondence study.

The Commission closed this discussion by requesting Deputy Director Hoffman get back with them after looking into LMS systems, conducting a licensee survey regarding distance education preferences and discussing certifying correspondence study courses again with ARELLO.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

Item A Complaint 2012-022 – Andrew J., Jerry F., Jerrilynn K. Lyons vs. Lloyd Charles Freyer

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Ptak that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item B Complaint 2012-038

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Ptak that the complaint be set for hearing on the alleged violations. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item C Complaint 2012-039 – Jennifer Beirola vs. Justin Wynn Rivers

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Avery and seconded by Stange that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item D Complaint 2012-040 – Kim T. Manning vs. Margaret Theresa Maloney

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Stange and seconded by Dover that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item E Complaint 2013-003 – Terry L. Bouge vs. Tyrone Jay Scott

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover to clarify the timeline with documentation and present it at the next meeting. The motion died for a lack of a second.

After discussion, a motion was made by Ptak and seconded by Rouch that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item F Complaint 2013-010 – Eric Church and Dr. Jaine Brownell vs. Todd S. Bartusek

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Stange and seconded by Avery that this complaint be held in abeyance and a new complaint be filed and set against the Respondent per the Staff recommendation. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Item G Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

Item H Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

Item I Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Avery that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report for Items G, H and I. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

**Complaint 2013-007,
Commission vs. Bruce Gerald Johnson**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-007, Commission vs. Bruce Gerald Johnson. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Ptak to enter into the Order as presented. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman not participating or voting, being absent and excused.

Disciplinary Hearings

There were no disciplinary hearings scheduled to be held at the meeting.

Informal Special Appearances

Kurt Fredrick Pfeffer, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Pfeffer's special appearance; a letter of explanation from Mr. Pfeffer; character reference letters for Mr. Pfeffer; Mr. Pfeffer's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Pfeffer was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Pfeffer explained the situations regarding his past criminal history.

After discussion, a motion was made by Dover and seconded by Avery to allow Mr. Pfeffer to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Pfeffer must also notify the Commission staff of any criminal charge for two years. Motion carried with Avery, Dover, Rouch, and Stange voting aye, with Ptak and Gale voting nay, with Freeman not participating or voting, being absent and excused.

Timothy Francis Kenkel, Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Kenkel's special appearance; a letter of explanation from Mr. Kenkel; character reference letters for Mr. Kenkel; Mr. Kenkel's Certification of License History from Colorado; Probation release form; Mr. Kenkel's criminal history report; and his broker application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kenkel was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Kenkel distributed an additional exhibit which included: a current Certification of License History from Colorado; State of Colorado examination score results; the REALTOR pledge showing he is a member; University of Nebraska transcript; certificate from the American Bar Association from Denver Paralegal Institute; course completion certificate from Randall School of Real Estate; and an arrest report from the Boulder County Jail. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

Mr. Kenkel explained the situations regarding his past criminal history.

After discussion, a motion was made by Dover and seconded by Rouch to allow Mr. Kenkel to have a broker license issued after making proper application. Motion failed with Dover, Rouch and Stange voting aye, with Avery, Ptak and Gale voting nay, and with Freeman not participating or voting, being absent and excused.

2012-2013 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2012-2013 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained progress on each item on the objectives exhibits.

No action was necessary on this report.

Legislative Matters

LB 13 - No new information presented.

LB 72 - No new information presented.

LB 120 - No new information presented.

LB 289 – Director Lemon reported that this bill had been placed on General File.

LB 427 – No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – Scottsdale, Arizona - April 10-13, 2013 – Report of Attendees

Director Lemon noted that Commissioners Avery and Stange and Deputy Director Hoffman and he attended the ARELLO Annual Meeting.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

No action was necessary on this report.

FBI Audit – Criminal Background Checks

Director Lemon noted that the FBI conducted an audit of the Nebraska Real Estate Commission's process for handling the sensitive information contained in the criminal background checks. He explained that the FBI suggested a few changes to our current procedures. One change requested was that after each Commission Meeting, the Informal Special Appearance Exhibit is to be retrieved from each of the Commissioners for destruction purposes. He also explained that the Commission needs to provide the applicants information regarding their opportunity to correct any information reflected inaccurately on the Criminal Background Check. The final FBI recommendation related to our current process where the law requires the background check to be provided to the Commission prior to the application being filed with our office. The FBI auditor said the Federal law contemplates us receiving the application before requesting the background check, but did understand that our current statute prohibits us from doing it that way now.

No action was necessary on this report.

Future Meeting Dates

May 16-17, 2013- Staybridge Suites, Lincoln
June 20-21, 2013- Staybridge Suites, Lincoln
August 15-16, 2013- Staybridge Suites, Lincoln
September 27, 2013- Staybridge Suites, Lincoln
October 17-18, 2013- Staybridge Suites, Lincoln
November 21-22, 2013- Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:45 a.m.

At 12:05 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:15 a.m.

At 1:35 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Rouch that the meeting adjourn. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Freeman not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the April 18, 2013, meeting of the Nebraska Real Estate Commission were available for inspection on April 22, 2013, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Susan Geschwender, Randall School, Omaha
Trudy Meyer, CBSHOME Real Estate, Omaha
Dean Kenkel, Omaha
Lois Kenkel, Omaha
Paul Vojchegoske, Omaha
Tom Ackley, Koley Jessen, PC & Randall School of Real Estate, Omaha